

Grievances and Arbitration

Under the Civil Service Reform Act, a grievance is broadly defined. A grievance can be any complaint by an employee concerning a condition of employment or an allegation that the contract or statute has not been properly interpreted and applied. This definition covers many subjects.

The negotiated grievance procedure as described in Article 9 of the Collective Bargaining Agreement (Contract) is a structured system for resolving disputes. The procedure is a bilaterally established method for finding out where problems exist and solving those problems quickly.

The Union's Role

In most cases, employees that believe they have a grievance, will be represented by a union Steward. A Steward is generally elected to this position by local union members. He or she is the first-level representative of those employees in dealing with management. The steward is in the position of representing the interests of the individual bargaining unit member, the interests of the other employees in the bargaining unit and the interests of the union. These interests do not always coincide, and such conflicts will test the stamina and the leadership skills of the best steward. Being aware of this difficult role should enable management to work more effectively with the steward.

Both the supervisor and the steward are entitled to mutual respect. Treating the steward as an institutional equal and recognizing that he or she has a legitimate function to perform will make the job of supervisors easier when, for example, they are hearing grievances and making decisions on those grievances. At the same time, when they are dealing with the steward in his or her capacity as an employee, they must treat the steward the same as any other employee they supervise.

Since the steward advises both the employee and the union, he or she is in a position to assist supervisors and managers in resolving complaints. If the management action being grieved was proper, the steward is in a position to advise the employee and to convince the employee to withdraw the complaint. If management is in the right and the steward understands their position, his or her efforts to convince the employee that the grievance is not valid will often be more effective than management's efforts because of the steward's role as an employee advocate. Conversely, close attention should be paid to the arguments given by the steward on behalf of the employee. If the employee is correct, the grievance should be resolved quickly. This will enhance management's credibility in dealing with the steward on any future grievances and should increase their chances of settling complaints in the early stages of the grievance process.

The Supervisor's Role

When hearing a grievance and making a decision, the supervisor is representing agency management. They should ensure that they are not relinquishing their ability to get their job done and, at the same time, that they are treating employees fairly.

Their job in resolving grievances will be made easier by following several guidelines:

- Listen carefully to the grievance. Making a decision will be easier if they understand the problem behind the complaint.

- Get all of the facts surrounding the grievance. This will probably require asking direct questions of the employee.
- Do not argue with the employee or take a position on the grievance at the time the grievance is submitted. They will have ample opportunity to express their opinion when they issue a decision.
- Be objective and do not assume the grievance is invalid. Remember that the decision may be reviewed by other members of the management team and, ultimately, by an impartial arbitrator.
- Investigate the grievance by talking to others who may have knowledge of the problem.
- Determine the management interpretation of all contract clauses relevant to the grievance.

Review previous cases to determine if there are any similar cases or past practices to guide them in making their decision.

- Determine whether all procedural requirements have been met before issuing a decision.
- Ensure that the union is given a opportunity to be represented at any discussion with members of the bargaining unit concerning a grievance filed by a bargaining unit employee.

If they are certain that they have the proper answer to a grievance and feel that a quick response will resolve the problem, an immediate reply is in order. In most cases, however, they will need additional time to investigate the allegations, assemble the evidence, and evaluate available remedies. Remember that the grievant has generally had some time to think his or her position through; the supervisor should take the time to make sure you know as much about the issue as the grievant before trying to resolve the problem. Keep in mind also that the decision will impact on other supervisors and management officials. It is in the best interest of all parties to ensure that the answer given to a grievance is fair and based on all relevant facts. Avoiding the temptation of doing too much in your first meeting with the grievant will save time in most cases.

A hasty decision can have unpleasant consequences. A decision that expands, diminishes, or modifies a collective bargaining agreement can be difficult to overcome. In any future grievances, other supervisors and managers, or an arbitrator, may want to know what precedents have been established. The decision may be the determining factor in those future decisions. In short, supervisors should protect themselves and the agency by thoroughly investigating the grievance and making an objective analysis before taking action to resolve a grievance.

Preparing The Written Decision

When the investigation is completed and all relevant facts are available, the supervisor must make a decision. Discussing the proposed solution with others, such as their supervisor, the Labor Relations Specialist, or other supervisors, is often wise. In preparing the decision, several points should be considered:

- Research the contract. If there are any doubts about the interpretation of a specific contract article, contact the Labor Relations Specialist for information and guidance. If the grievant's or union's interpretation of the contract differs, note the difference in the decision. This decreases the likelihood that management will be bound by an unfavorable interpretation of the contract clause in subsequent decisions.
- Address any procedural violations of the contract that have occurred. If the grievance is being denied because of procedural errors, cite the articles and sections of the contract that have been violated.
- Discuss the remedy sought by the grievant and any settlement that is being proposed. The remedy sought may not be appropriate. If this is the case, give your rationale in the decision.
- If a decision is made that the grievance is valid, do not detract from a satisfactory resolution of the problem by delaying the resolution.
- Explain the decision to the grievant. The arguments made in the grievance should be confronted directly. Failure to respond to unpleasant issues may aggravate the situation.
- The written decision should be concise and void of subjects unrelated to the grievance.
- Maintain a grievance file. No effective labor relations program can depend on memory, as the passage of time may distort recollections of what occurred. If a grievance decision is appealed, the grievance file will be useful for detailing the grievance, the facts, the investigation, and the decision.

Remember that the purpose of the procedure is to solve problems. A supervisor deciding a grievance is not an arbitrator. Their responsibility is to resolve those complaints where the grievant is entitled to satisfaction and to deny grievances where management is in the right. Following these steps should help them resolve problems and simultaneously retain their ability to manage their organization.

The Arbitration Process

The Civil Service Reform Act provides for arbitration as the final step in the grievance process. Arbitration is a proceeding in which an impartial third party, usually chosen by the parties to a dispute, hears both sides and renders a final and binding award.

An arbitrator is an impartial observer of the grievance and possesses the basic knowledge to enable him or her to become sufficiently informed concerning the facts of a dispute before issuing a decision.

The arbitrator is not a mediator.

A mediator attempts to find a solution satisfactory to both parties. The arbitrator, on the other hand, issues a decision which may be unsatisfactory to one or both of the parties, but one which is consistent with the labor contract and tailored to the circumstances of the individual grievance.

The procedures for selecting an arbitrator are usually determined at the time the labor contract is negotiated. Most agreements provide for selection of an arbitrator from a list supplied by the Federal Mediation and Conciliation Service or from the American Arbitration Association. On occasions, an agreement will provide for a permanent arbitrator to hear and decide all disputes that are submitted during the life of the agreement.

The Arbitration Hearing

To a casual observer, an arbitration hearing appears to be the same as a court proceeding. While there are some similarities, arbitration hearings are generally less formal. Rules of evidence, that are strictly enforced in a court proceeding are not rigidly observed by most arbitrators. The purpose of the arbitration hearing is to enable the arbitrator to learn all the facts of the case, and this is generally easier with a more informal atmosphere.

The representative for the agency and the union may be an attorney, but this is not required. Each party selects its own representative and, for a variety of reasons, the agency's representative may be the Labor Relations Specialist or personnel specialist, and the union may be represented by one of its local officers or national representatives. Some arbitrators will, of course, adopt a more legalistic approach, particularly if it will aid in controlling unnecessary arguments and attempts by the parties to introduce evidence that is not relevant to the case.

Each side will have an opportunity to introduce evidence. This can be done by introducing documents or by the testimony of witnesses. As a supervisor who is involved in a grievance that goes to arbitration, they may be called as a witness. If they are called as a witness, the agency representative will ask them questions. The union representative will also have an opportunity to ask questions. The purpose of the hearing and of their testimony is to develop the facts for the arbitrator who needs to hear both sides of the case to make the correct decision.

Supervisors Role in the Hearings

If they are called as a witness, their testimony will be important to the agency in convincing the arbitrator that the action taken by management was proper. Prior to the hearing, they will be discussing the case and their testimony with the agency representative. He or she will review the questions that the supervisor will be asked and the information that they will be providing to the arbitrator through your testimony.

The supervisor should ask the management representative to explain any questions they may have about the hearing and their role in it. It is important that they understand what is expected of them and that they are able to give their testimony in a straightforward and convincing manner. They should expect to have the union's representative ask questions. It is common practice for them to discuss the nature of these questions with their own representative before the hearing.

Remember that they are only responsible for their own answers. If they do not have knowledge of an event or technical information that the union representative implies they should have, there is nothing wrong with stating that they do not know the answer. Their testimony will be much more credible, and therefore much more useful, if it is presented in a calm, objective, and straightforward manner.

In summary, the grievance procedure is a problem-solving mechanism. Supervisors play an important role in protecting management's legitimate interests and, at the same time, to ensure that their employees are treated fairly and equitably. They may be involved in the grievance process as a deciding official, an information source, or as a witness in an arbitration hearing. Regardless of their role, they should remember that the actions they take are important to the agency and its ability to do an effective job.

If you have any questions concerning the grievance or arbitration process, please contact Mr. Walter Ross, the Labor Relations Specialist, at DSN 867-8566 or Commercial 474-1556 or via email at walter.ross@nm.ngb.army.mil.